UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
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Return Date: **April 20, 2017 at 10:00 a.m.**

In re:

LOUIS M. BOREK,

Debtor.
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Chapter 7

Case No.:1-16-42540-ess

JOINDER AND LIMITED OBJECTION OF SAC FUND II 0406, LLC TO THE MOTION OF TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY FOR AN ORDER (1) ABANDONING TRUSTEE'S INTEREST IN REAL PROPERTY, (2) GRANTING RELIEF FROM THE AUTOMATIC STAY AND (3) DIRECTING TURNOVER OF PROCEEDS OF THE REAL PROPERTY

TO THE HONORABLE ELIZABETH S. STONG,
UNITED STATES BANKRUPTCY JUDGE:

SAC FUND II 0406, LLC ("SAC"), by its attorneys, hereby submits this Joinder and Limited Objection to the Motion for an order (1) abandoning of the Trustee's interest in real property, (2) granting relief from the automatic stay and (3) directing turnover of proceeds of the real property ("Motion") filed by the **Town of Babylon Industrial Development Agency** ("Movant"). In support of this Joinder and Limited Objection, SAC respectfully submits as follows:

1. Movant has filed the Motion which seeks to have the Trustee abandon whatever interest the debtor's estate may have in the property located at **87 East Jefryn Boulevard, Deer Park, New York 11729** (the "Deer Park Property"). Upon information and belief, the debtor in this Chapter 7 case is the sole member of **L.M. Borek Realty LLC**, which is the correct party that has an interest in the Deer Park Property.

2. The transaction described in the Motion is part of a program to provide economic relief and help parties acquire property. The program also consisted of future tax savings by arranging for a "loan", deed transfer, and lease-back arrangement between the Town of Babylon and the future property owner, and in this transaction, coupled with a separate loan, by a private lender. All of these agreements were essentially entered into simultaneously. The lease-back agreement specifically provided that the private loan would be a mortgage lien and security interest in the property, and that the lease agreement would be subject to and subordinate to said loan.

3. So, simultaneously with the execution of the Lease Agreement that was entered into between L.M. Borek Realty LLC and Movant, L.M. Borek Realty and Movant also entered into a promissory note and mortgage with General Electric Capital Corporation ("GE") , the purpose of which was to finance the acquisition of the property as well as a portion of the project cost with respect thereto. A copy of the promissory note and mortgage are annexed hereto as Exhibit "A" and Exhibit "B", respectively. The GE obligation was assigned to Key Bank and is presently held by SAC. Well before the filing of this case, the mortgage was in default, and a foreclosure action had been commenced by GE, which was in the process of being assigned over to SAC at the time of the filing of this case. See copies of the Assignment of Mortgage and Assignment of Assignment of Rents annexed hereto as Exhibit "C". The outstanding balance due SAC with respect thereto was approximately $1,755,666.39 as of the petition date. A judgment of foreclosure and sale was entered in the foreclosure action in favor of GE as against L.M. Borek Realty LLC and Movant, amongst others, on September 17, 2015. A copy of the judgment is annexed hereto as Exhibit "D".

4. SAC agrees that the estate has no interest in the Deer Park Property, and that said property is not property of the estate. Moreover, SAC agrees that the Deer Park Property is burdensome to the estate, and therefore, joins in the request that the Deer Park Property should be abandoned by the Trustee.

5. The Bankruptcy Code also provides that on a request of a party in interest, after notice and a hearing, the Court may grant relief from the automatic stay for cause, including lack of adequate protection of an interest in property of such party in interest.

6. In this case, SAC agrees and joins in the request that cause exists to grant relief in the automatic stay because, amongst other things, the debtor has no interest in the Deer Park Property, nor has the estate, and neither the debtor or the trustee have provided adequate protection to anyone in this case. As was stated in the Motion, SAC agrees and also believes that in an abundance of caution, stay relief should be granted, but both to Movant and it as well so that all of the parties' rights with respect to the Deer Park Property can be determined in the appropriate non-bankruptcy forum.

7. Accordingly, just as Movant seeks relief from the automatic stay, and in the event the Court grants the Motion, stay relief should be granted to SAC to insure that all parties with an interest in the Deer Park Property are free to pursue any and all State Law remedies they have with respect thereto.

8. That said, SAC, under its Mortgage and Note, does have an assignment of rent provision which was duly recorded. See, Exhibit "E" annexed hereto. SAC's interest in the rents has priority over Movant's claim with respect thereto. So, while SAC does agree that the trustee should have to turn over rents collected, SAC submits they should be turned over

to it or at a minimum held until the appropriate State Court could determine whether either Movant or SAC is otherwise entitled to those proceeds. As such, pending a determination by the appropriate Court, SAC believes that the trustee should continue to hold the monies, or at a minimum, deposit the money with counsel to one of the two parties claiming such right.

9. Accordingly, for the reasons set forth herein and above, SAC joins in and adopts the legal and factual arguments set forth in the Motion, agrees that the estate should abandon whatever interest it may have in the Deer Park Property and/or stay relief should be granted with respect thereto for all parties; and also agrees that the rents should be turned over, but submits that until a determination is made by the appropriate court as to who is entitled to those proceeds, those proceeds should not be turned over to Movant, but rather, should be held in escrow either by Movant's counsel or counsel to SAC. Furthermore, for the reasons set forth above, SAC also requests that the Court grant such relief sought in the Motion to it as well.

Dated: New York, New York
April 18, 2017

ROBINSON BROG LEINWAND GREENE GENOVESE & GLUCK P.C.
Attorney for SAC Fund II 0406, LLC

By: /s/Robert M. Sasloff_______
Robert M. Sasloff, Esq.
875 Third Avenue, 9th Floor
New York, New York 10022
Tel No.: 212-603-6300